



Sen. Toi W. Hutchinson

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LRB098 04614 HLH 44409 a

1 AMENDMENT TO SENATE BILL 337

2 AMENDMENT NO. _____. Amend Senate Bill 337 by replacing
3 everything after the enacting clause with the following:

4 "Section 5. The Illinois Income Tax Act is amended by
5 changing Section 502 as follows:

6 (35 ILCS 5/502) (from Ch. 120, par. 5-502)

7 Sec. 502. Returns and notices.

8 (a) In general. A return with respect to the taxes imposed
9 by this Act shall be made by every person for any taxable year:

10 (1) for which such person is liable for a tax imposed
11 by this Act, or

12 (2) in the case of a resident or in the case of a
13 corporation which is qualified to do business in this
14 State, for which such person is required to make a federal
15 income tax return, regardless of whether such person is
16 liable for a tax imposed by this Act. However, this

1 paragraph shall not require a resident to make a return if
2 such person has an Illinois base income of the basic amount
3 in Section 204(b) or less and is either claimed as a
4 dependent on another person's tax return under the Internal
5 Revenue Code, or is claimed as a dependent on another
6 person's tax return under this Act.

7 Notwithstanding the provisions of paragraph (1), a
8 nonresident (other than, for taxable years ending on or after
9 December 31, 2011, a nonresident required to withhold tax under
10 Section 709.5) whose Illinois income tax liability under
11 subsections (a), (b), (c), and (d) of Section 201 of this Act
12 is paid in full after taking into account the credits allowed
13 under subsection (f) of this Section or allowed under Section
14 709.5 of this Act shall not be required to file a return under
15 this subsection (a).

16 (b) Fiduciaries and receivers.

17 (1) Decedents. If an individual is deceased, any return
18 or notice required of such individual under this Act shall
19 be made by his executor, administrator, or other person
20 charged with the property of such decedent.

21 (2) Individuals under a disability. If an individual is
22 unable to make a return or notice required under this Act,
23 the return or notice required of such individual shall be
24 made by his duly authorized agent, guardian, fiduciary or
25 other person charged with the care of the person or
26 property of such individual.

1 (3) Estates and trusts. Returns or notices required of
2 an estate or a trust shall be made by the fiduciary
3 thereof.

4 (4) Receivers, trustees and assignees for
5 corporations. In a case where a receiver, trustee in
6 bankruptcy, or assignee, by order of a court of competent
7 jurisdiction, by operation of law, or otherwise, has
8 possession of or holds title to all or substantially all
9 the property or business of a corporation, whether or not
10 such property or business is being operated, such receiver,
11 trustee, or assignee shall make the returns and notices
12 required of such corporation in the same manner and form as
13 corporations are required to make such returns and notices.

14 (c) Joint returns by husband and wife.

15 (1) Except as provided in paragraph (3):

16 (A) if a husband and wife file a joint federal
17 income tax return for a taxable year ending before
18 December 31, 2009, they shall file a joint return under
19 this Act for such taxable year and their liabilities
20 shall be joint and several;

21 (B) if a husband and wife file a joint federal
22 income tax return for a taxable year ending on or after
23 December 31, 2009, they may elect to file separate
24 returns under this Act for such taxable year. The
25 election under this paragraph must be made on or before
26 the due date (including extensions) of the return and,

1 once made, shall be irrevocable. If no election is
2 timely made under this paragraph for a taxable year:

3 (i) the couple must file a joint return under
4 this Act for such taxable year,

5 (ii) their liabilities shall be joint and
6 several, and

7 (iii) any overpayment for that taxable year
8 may be withheld under Section 909 of this Act or
9 under Section 2505-275 of the Civil Administrative
10 Code of Illinois and applied against a debt of
11 either spouse without regard to the amount of the
12 overpayment attributable to the other spouse; and

13 (C) if the federal income tax liability of either
14 spouse is determined on a separate federal income tax
15 return, they shall file separate returns under this
16 Act.

17 (2) If neither spouse is required to file a federal
18 income tax return and either or both are required to file a
19 return under this Act, they may elect to file separate or
20 joint returns and pursuant to such election their
21 liabilities shall be separate or joint and several.

22 (3) If either husband or wife is a resident and the
23 other is a nonresident, they shall file separate returns in
24 this State on such forms as may be required by the
25 Department in which event their tax liabilities shall be
26 separate; but if they file a joint federal income tax

1 return for a taxable year, they may elect to determine
2 their joint net income and file a joint return for that
3 taxable year under the provisions of paragraph (1) of this
4 subsection as if both were residents and in such case,
5 their liabilities shall be joint and several.

6 (4) Innocent spouses.

7 (A) However, for tax liabilities arising and paid
8 prior to August 13, 1999, an innocent spouse shall be
9 relieved of liability for tax (including interest and
10 penalties) for any taxable year for which a joint
11 return has been made, upon submission of proof that the
12 Internal Revenue Service has made a determination
13 under Section 6013(e) of the Internal Revenue Code, for
14 the same taxable year, which determination relieved
15 the spouse from liability for federal income taxes. If
16 there is no federal income tax liability at issue for
17 the same taxable year, the Department shall rely on the
18 provisions of Section 6013(e) to determine whether the
19 person requesting innocent spouse abatement of tax,
20 penalty, and interest is entitled to that relief.

21 (B) For tax liabilities arising on and after August
22 13, 1999 or which arose prior to that date, but remain
23 unpaid as of that date, if an individual who filed a
24 joint return for any taxable year has made an election
25 under this paragraph, the individual's liability for
26 any tax shown on the joint return shall not exceed the

1 individual's separate return amount and the
2 individual's liability for any deficiency assessed for
3 that taxable year shall not exceed the portion of the
4 deficiency properly allocable to the individual. For
5 purposes of this paragraph:

6 (i) An election properly made pursuant to
7 Section 6015 of the Internal Revenue Code shall
8 constitute an election under this paragraph,
9 provided that the election shall not be effective
10 until the individual has notified the Department
11 of the election in the form and manner prescribed
12 by the Department.

13 (ii) If no election has been made under Section
14 6015, the individual may make an election under
15 this paragraph in the form and manner prescribed by
16 the Department, provided that no election may be
17 made if the Department finds that assets were
18 transferred between individuals filing a joint
19 return as part of a scheme by such individuals to
20 avoid payment of Illinois income tax and the
21 election shall not eliminate the individual's
22 liability for any portion of a deficiency
23 attributable to an error on the return of which the
24 individual had actual knowledge as of the date of
25 filing.

26 (iii) In determining the separate return

1 amount or portion of any deficiency attributable
2 to an individual, the Department shall follow the
3 provisions in subsections (c) and (d) of Section
4 6015 of the Internal Revenue Code.

5 (iv) In determining the validity of an
6 individual's election under subparagraph (ii) and
7 in determining an electing individual's separate
8 return amount or portion of any deficiency under
9 subparagraph (iii), any determination made by the
10 Secretary of the Treasury, by the United States Tax
11 Court on petition for review of a determination by
12 the Secretary of the Treasury, or on appeal from
13 the United States Tax Court under Section 6015 of
14 the Internal Revenue Code regarding criteria for
15 eligibility or under subsection (d) of Section
16 6015 of the Internal Revenue Code regarding the
17 allocation of any item of income, deduction,
18 payment, or credit between an individual making
19 the federal election and that individual's spouse
20 shall be conclusively presumed to be correct. With
21 respect to any item that is not the subject of a
22 determination by the Secretary of the Treasury or
23 the federal courts, in any proceeding involving
24 this subsection, the individual making the
25 election shall have the burden of proof with
26 respect to any item except that the Department

1 shall have the burden of proof with respect to
2 items in subdivision (ii).

3 (v) Any election made by an individual under
4 this subsection shall apply to all years for which
5 that individual and the spouse named in the
6 election have filed a joint return.

7 (vi) After receiving a notice that the federal
8 election has been made or after receiving an
9 election under subdivision (ii), the Department
10 shall take no collection action against the
11 electing individual for any liability arising from
12 a joint return covered by the election until the
13 Department has notified the electing individual in
14 writing that the election is invalid or of the
15 portion of the liability the Department has
16 allocated to the electing individual. Within 60
17 days (150 days if the individual is outside the
18 United States) after the issuance of such
19 notification, the individual may file a written
20 protest of the denial of the election or of the
21 Department's determination of the liability
22 allocated to him or her and shall be granted a
23 hearing within the Department under the provisions
24 of Section 908. If a protest is filed, the
25 Department shall take no collection action against
26 the electing individual until the decision

1 regarding the protest has become final under
2 subsection (d) of Section 908 or, if
3 administrative review of the Department's decision
4 is requested under Section 1201, until the
5 decision of the court becomes final.

6 (d) Partnerships. Every partnership having any base income
7 allocable to this State in accordance with section 305(c) shall
8 retain information concerning all items of income, gain, loss
9 and deduction; the names and addresses of all of the partners,
10 or names and addresses of members of a limited liability
11 company, or other persons who would be entitled to share in the
12 base income of the partnership if distributed; the amount of
13 the distributive share of each; and such other pertinent
14 information as the Department may by forms or regulations
15 prescribe. The partnership shall make that information
16 available to the Department when requested by the Department.

17 (e) For taxable years ending on or after December 31, 1985,
18 and before December 31, 1993, taxpayers that are corporations
19 (other than Subchapter S corporations) having the same taxable
20 year and that are members of the same unitary business group
21 may elect to be treated as one taxpayer for purposes of any
22 original return, amended return which includes the same
23 taxpayers of the unitary group which joined in the election to
24 file the original return, extension, claim for refund,
25 assessment, collection and payment and determination of the
26 group's tax liability under this Act. This subsection (e) does

1 not permit the election to be made for some, but not all, of
2 the purposes enumerated above. For taxable years ending on or
3 after December 31, 1987, corporate members (other than
4 Subchapter S corporations) of the same unitary business group
5 making this subsection (e) election are not required to have
6 the same taxable year.

7 For taxable years ending on or after December 31, 1993,
8 taxpayers that are corporations (other than Subchapter S
9 corporations) and that are members of the same unitary business
10 group shall be treated as one taxpayer for purposes of any
11 original return, amended return which includes the same
12 taxpayers of the unitary group which joined in filing the
13 original return, extension, claim for refund, assessment,
14 collection and payment and determination of the group's tax
15 liability under this Act.

16 (f) The Department may promulgate regulations to permit
17 nonresident individual partners of the same partnership,
18 nonresident Subchapter S corporation shareholders of the same
19 Subchapter S corporation, and nonresident individuals
20 transacting an insurance business in Illinois under a Lloyds
21 plan of operation, and nonresident individual members of the
22 same limited liability company that is treated as a partnership
23 under Section 1501 (a)(16) of this Act, to file composite
24 individual income tax returns reflecting the composite income
25 of such individuals allocable to Illinois and to make composite
26 individual income tax payments. The Department may by

1 regulation also permit such composite returns to include the
2 income tax owed by Illinois residents attributable to their
3 income from partnerships, Subchapter S corporations, insurance
4 businesses organized under a Lloyds plan of operation, or
5 limited liability companies that are treated as partnership
6 under Section 1501(a)(16) of this Act, in which case such
7 Illinois residents will be permitted to claim credits on their
8 individual returns for their shares of the composite tax
9 payments. This paragraph of subsection (f) applies to taxable
10 years ending on or after December 31, 1987.

11 For taxable years ending on or after December 31, 1999, the
12 Department may, by regulation, also permit any persons
13 transacting an insurance business organized under a Lloyds plan
14 of operation to file composite returns reflecting the income of
15 such persons allocable to Illinois and the tax rates applicable
16 to such persons under Section 201 and to make composite tax
17 payments and shall, by regulation, also provide that the income
18 and apportionment factors attributable to the transaction of an
19 insurance business organized under a Lloyds plan of operation
20 by any person joining in the filing of a composite return
21 shall, for purposes of allocating and apportioning income under
22 Article 3 of this Act and computing net income under Section
23 202 of this Act, be excluded from any other income and
24 apportionment factors of that person or of any unitary business
25 group, as defined in subdivision (a)(27) of Section 1501, to
26 which that person may belong.

1 For taxable years ending on or after December 31, 2008,
2 every nonresident shall be allowed a credit against his or her
3 liability under subsections (a) and (b) of Section 201 for any
4 amount of tax reported on a composite return and paid on his or
5 her behalf under this subsection (f). Residents (other than
6 persons transacting an insurance business organized under a
7 Lloyds plan of operation) may claim a credit for taxes reported
8 on a composite return and paid on their behalf under this
9 subsection (f) only as permitted by the Department by rule.

10 (f-5) For taxable years ending on or after December 31,
11 2008, the Department may adopt rules to provide that, when a
12 partnership or Subchapter S corporation has made an error in
13 determining the amount of any item of income, deduction,
14 addition, subtraction, or credit required to be reported on its
15 return that affects the liability imposed under this Act on a
16 partner or shareholder, the partnership or Subchapter S
17 corporation may report the changes in liabilities of its
18 partners or shareholders and claim a refund of the resulting
19 overpayments, or pay the resulting underpayments, on behalf of
20 its partners and shareholders.

21 (g) The Department may adopt rules to authorize the
22 electronic filing of any return required to be filed under this
23 Section.

24 (h) The Department shall provide a taxpayer receipt to each
25 Illinois individual income tax filer who filed an electronic
26 income tax return for the preceding taxable year directly

1 through the Illinois Department of Revenue's website on or
2 after the effective date of this amendatory Act of the 98th
3 General Assembly. For purposes of this subsection, each
4 taxpayer receipt shall:

5 (1) confirm that the Department has received the
6 taxpayer's Illinois individual income tax return for the
7 prior taxable calendar year;

8 (2) contain tables or other graphic representations
9 including, but not limited to, the following information:

10 (A) categories of prior State fiscal year revenue;

11 (B) categories of prior State fiscal year
12 spending; and

13 (C) with respect to each revenue and spending
14 category, the ratio (expressed as a percentage) and
15 proportional amount (expressed in dollars) of State
16 revenue and spending for the preceding fiscal year.

17 When a taxpayer files a State income tax return
18 electronically through the Department's website, the receipt
19 shall be generated as part of the electronic confirmation of
20 filing.

21 The Department shall also make available on its public
22 website the information described in paragraph (2) of this
23 subsection (h). In addition, the Department may make available
24 on its public website an interactive tool that will calculate
25 the dollars allocated to the spending categories described in
26 paragraph (2) of this subsection (h) according to input

1 provided by any visitor to the site.

2 (Source: P.A. 96-520, eff. 8-14-09; 97-507, eff. 8-23-11.)

3 Section 99. Effective date. This Act takes effect January
4 1, 2014.".